

Chair
Cabinet Policy Committee

POLICE ACT REVIEW - PAPER 6: ADMINISTRATIVE AND MISCELLANEOUS MATTERS

Purpose

1. This paper is the final of six companion papers through which Ministers are invited to make policy decisions about the content of new policing legislation. It deals with a range of technical, administrative and miscellaneous matters.

Summary

2. The 'nuts and bolts' of how New Zealand Police operates are critical to the delivery of policing services. The Police Act 1958 and Police Regulations 1992 provide legislative support for a range of technical and administrative matters. New legislation can usefully carry forward and update these existing provisions, as well as offer additional direction in specific areas. Options identified include:
 - clarifying mechanisms for directing or guiding actions by Police employees
 - confirming the Commissioner's ability to assign ranks
 - strengthening vetting practices for Police employees, and enabling forensic elimination/identification databases
 - ensuring clear separation of Police employees from elected political functions
 - facilitating effective management of Police's Public Works Act land holdings.
3. In addition, there are a small number of minor Police-related issues which could be tidied up in a Bill leading to a new Policing Act (e.g., updating the approach to approving the use of Police uniforms for theatrical purposes). I invite Cabinet to agree to appropriate provisions being included in the planned Policing Bill.

Background

4. A sometimes overlooked foundation for policing is a robust set of administrative arrangements. Although they may attract less attention than other aspects of policing, the arrangements put in place to allow Police to function are the building blocks of a solid organisation. Naturally, not all administrative details need the backing of legislation. For example, rostering staff which helps Police run smoothly sits comfortably outside legislation. But some administrative details need or could otherwise benefit from legislative support. It remains an open question, however, whether such support comes from primary, secondary or tertiary legislation (i.e., from statute, regulations or a subordinate legal instrument).

Overall style of proposed Policing Bill

5. I see the proposed new Policing Act being essentially a framework statute, with detail generally contained in regulations or *General Instructions* issued by the Commissioner. There might be exceptions when a clear minimum standard is required, or to signal clearly New Zealand Police's approach on an issue, where it is appropriate to lift matters of detail up into statute, e.g., enabling the Commissioner to issue a *Code of Conduct* for all Police employees. But the

overall style of new policing legislation should be as non-prescriptive and enabling as possible. In my view, this will provide the strongest foundation for managing policing in the future, with the inherent flexibility needed to allow for continued evolution.

Carrying forward current provisions

6. My starting point has been to assess which administrative features of the Police Act 1958 and Police Regulations 1992 might usefully carry forward into new policing legislation. Overall, I believe a large number of current provisions perform a worthwhile function, and can appropriately be transited into a new Act or Regulations. In some cases, it will be necessary to update the language of current provisions to take account of changes, such as removal of the title of Region Commander (currently defined in regulation 2 of the 1992 Regulations).
7. To highlight where sensible carry-overs might occur, Appendix 1 to this paper maps across to new legislation administrative or technical provisions in the 1958 Act and 1992 Regulations. Subject to Cabinet agreement, I propose these carry-overs be given effect via the Policing Bill. This would ensure there continue to be clear legislative supports in place for common-sense practices, such as the ability for Police staff to execute Court processes (e.g., warrants to arrest), and for Police employees to appear in place of colleagues in Court proceedings other than as witnesses (e.g., to cover situations when one officer may be the named informant, but it may be necessary or desirable for another officer to actually argue the application before the particular Court or tribunal).

Discussion of specific matters which require legislative support

8. The provisions outlined in Appendix 1 are largely self-explanatory, and require little in the way of extra commentary. I recommend Ministers agree to these provisions being dealt with as described. However, it is appropriate to draw attention to several proposals on which Ministers may wish to make direct decisions. The remainder of this paper briefly describes these matters.

Mechanisms for directing or guiding actions by Police employees

9. First, I propose to clarify the Police Commissioner's ability to issue *General Instructions* to Police employees, and for these *Instructions* to have precedence over other internal directives, circulars or manuals issued to staff. This is an area where there are problems at present, with a multi-tiered instructional system which is unnecessarily complicated and confusing. This point was emphasised by Dame Margaret Bazley in the Commission of Inquiry into Police Conduct. My intention is for the new Policing Act to offer a more certain legal basis for authoritative 'top down' communications within Police.
10. *General Instructions* are provided for by section 30 of the current Act. They have the effect of service-wide orders which all Police employees must obey and be guided by. They are a key tool for ensuring consistency of action, and are a valuable means of disseminating information nationally within a large and geographically-spread organisation. This can be especially valuable when advances in certain aspects of policing (e.g., monitoring 'at risk' people in custody) can be brought to the attention of all relevant Police staff and instituted as standard procedure. Having such a system in place also opens up opportunities for ensuring non-operational activities and behaviours in Police are standardised in key areas.

11. In carrying forward an ability for the Commissioner of Police to issue *General Instructions*, I propose two refinements. First, communication of a *General Instruction* to Police employees is deemed to have occurred principally after publication in the now-outdated *Police Gazette*. This deeming provision should be updated to enable electronic publication. Secondly, I propose to clarify the status a *General Instruction* has over other guidance to Police staff. This will cue Police staff to interpret *General Instructions* as critical parts of a proposed, consolidated, online Police manual. The key distinction is Police employees must comply with parts of the manual delineated as *General Instructions*; versus the expectation that other forms of guidance will be followed, but with an ability to take a non-standard approach if and when the occasion demands.

Confirming the Commissioner's ability to assign ranks

12. Secondly, I propose to address one of the curious features of the 1958 Act by providing certainty around the Commissioner's ability to appoint employees to certain ranks. Existing references in the 1958 Act to "commissioned officers" and "non-commissioned officers" have generally been found to be inadequate; especially for commissioned officers, who have no definitive legal status in the current Act.¹ It is counter-intuitive for Police's own Act to be less than clear about what it means to hold a ranking position within the organisation, and it seems increasingly anachronistic for the militaristic language of commissioned and non-commissioned officers (as opposed to enlisted or general staff) to be retained, given modern drafting practices which see specific Police ranks (e.g., Senior Sergeant) being referenced for different purposes in legislation.²
13. On balance, I am persuaded the assignment of specific Police ranks should be left to internal policy, as developed by successive Commissioners of Police.³ The current flexibility to assign ranks to staff should be carried forward, but it would be more in step with contemporary practices to replace all remaining legislative references to commissioned and non-commissioned police officers. A preliminary list of such references is attached as Appendix 2 to this paper.
14. In making this recommendation, I emphasise the intention is not to diminish the status of Police staff who attain higher ranks. Appointment to the rank of Sergeant, Senior Sergeant and Inspector all mark important milestones in a Police career, and traditions associated with these steps within the policing profession can continue to be respected and upheld. My point is simply that, in practice, there has been no real connection between becoming a commissioned officer of Police, and holding a commission as such, and the overall thrust of developing a non-prescriptive and enabling new Policing Act inclines towards removing such rigid and artificial categories from legislation.

Vetting practices

15. Thirdly, I recommend there be legislative support given to provide more robust pre-employment vetting of Police staff. This proposal has two limbs.

¹ A savings provision in section 66(5) of the Act offers some assistance, by deeming a reference to "a Superintendent of Police, or an Inspector of Police, or a Sub-Inspector of Police" to be a reference to a commissioned officer of Police. By a process of reverse interpretation, this allows references in other legislation to "commissioned officer of Police" - for instance, in section 37 of the Private Investigators and Security Guards Act 1974 and section 59 of the Mutual Assistance in Criminal Matters Act 1992 - to be understood as referring to Inspectors and Superintendents.

² For instance, see section 236 of the Children, Young Persons and Their Families Act 1989 and section 43 of the Coroners Act 2006.

³ The current Commissioner of Police has signalled a willingness to evaluate the potential (re)introduction of several ranks in New Zealand Police, including the traditional ranks of Chief Inspector and Chief Superintendent, as well as a non-statutory rank of Deputy Commissioner.

16. To begin with, I believe it would be beneficial to provide greater legal certainty around sensible background checks which are done on prospective Police staff. For many years, Police's pre-employment vetting has involved applicants completing a standardised clearance form in which prospective employees record details about themselves, as well as provide information about their partner or spouse, parents, siblings and/or children. There is a compelling case for requiring this information. Police staff may bring themselves and the organisation into disrepute, create risk or actual danger due to relationships or associations with gang members or people with criminal records. Pressure that can be put on Police employees by such family members or associates may put the staff member at personal risk, or endanger the integrity of Police premises, personnel, data or systems. Sensitive information could be misused or improperly disclosed, altered or deleted. Unauthorised access may be given to Police premises, putting personnel and property at risk. The identity and location of Police staff may be disclosed to criminal elements. Police operations and the safety of Police personnel could be severely impacted by such actions.
17. While Police's use of full pre-employment checks has a strong policy rationale, such vetting practices do not have clear legal backing. The fact such pre-employment checks routinely take place, involving vetting of an individual applicant's listed family members and associates, raise significant issues about Police's compliance with the Privacy Act 1993 and the Human Rights Act 1993.
18. While such vetting has been largely trouble-free in the past (as applicants voluntarily supply the details requested, and most would understand the reason for comprehensive background checks), it is unhelpful for there to be legal uncertainty about what, in my view, are sensible Police practices. Indeed, it is anomalous for pre-employment vetting of family members etc. to potentially fall foul of the Human Rights Act: once a person is employed by Police, if he or she engages in any activity or relationship which brings Police into disrepute or risks a conflict of interest, this may be grounds for taking action to minimise or eliminate the risk or, if necessary, end the employment. It is thus inconsistent and in some respects unfair to an individual to allow them to start working for Police, in circumstances where a decision may later be made to terminate the person's employment, because of a family or other relationship that did not stop them starting work with Police in the first place.
19. To put Police's pre-employment vetting practices on a more solid legal footing, my proposal is to consequentially amend the Human Rights Act to allow Police the same sort of employment-related exemption which currently applies to work of a political nature (under section 31 of the Act) and work involving national security (under section 25 of the Act). Such an amendment should be paired with an equivalent change to the Privacy Act, permitting Police to have similar sorts of employment-related exemptions from the operative principles as are enjoyed by the New Zealand Security Intelligence Service and the Government Communications Security Bureau (under section 57 of the Act).
20. One further area regarding vetting where I believe progress can be supported by legislation is Police's position under the Criminal Records (Clean Slate) Act 2004. Currently, all historic convictions can be considered by Police during vetting of applicants for sworn roles, but not for unsworn roles. I believe this separation is artificial, and too blunt to reflect the realities of a modern teamwork approach which is a defining characteristic of New Zealand policing.
21. Many unsworn employees are in just as powerful positions over other citizens as their sworn colleagues. For example, unsworn staff carry out functions

such as prosecutions, firearms control, crime analysis, and counter-terrorism intelligence, all of which can place them in positions that can have potentially profound effects on the lives of members of the public. Anyone working in such roles – be they sworn or unsworn – must have the highest standards of ethics and integrity. And full pre-employment vetting can provide extra levels of assurance around these expected characteristics. This is especially true of roles (e.g., intelligence analysts in district crime teams) where risks associated with cases of dishonesty and/or information leakage by inadequately-vetted staff would be very damaging. Accordingly, I am convinced it is critical to allow full probity checks to be conducted on all prospective Police employees.

22. Looking to the future, where Police employees with constabulary powers, some with warranted powers, and some with no legal powers, will work directly with members of the public in high trust roles, it will be important all Police employees are known to have a background that reveals no cause for concern. This is a legitimate expectation of the public about those who work for Police.⁴ Even more so than for most departments of state, it is a fair expectation that anyone joining Police and assisting to administer the law will be trustworthy, with a strong track record of lawful behaviour. This applies just as much to a frontline constable as to a call-taker in a Police Communications Centre, or someone in a secretarial role who types up witness and victim statements.
23. On all these counts, I believe there is a case to strengthen Police's current vetting practices, by allowing the existing Criminal Records (Clean Slate) Act exemption for Police cover all prospective Police employees.
24. I acknowledge there will be some who oppose my suggestion. This issue was addressed when the Criminal Records (Clean Slate) Act was being developed, and a decision was made by the legislation's sponsor to draw a distinction between sworn and non-sworn Police staff [POL (01) 341 and LEG (01) 218; POL Min (01) 32/5 and CAB Min (01) 38/9 refer]. However, I believe it is appropriate to refocus on this matter. My judgment is that the benefits to be gained from a whole-of-Police approach under the clean slate regime outweigh the perceived detriment of lessening the comprehensiveness of the legislation.

Forensic elimination/identification databases

25. In addition, I propose there be legislative support given to the establishment of databases for forensic elimination/identification of Police employees.
26. Gathering identity confirmation data from people wishing to become Police staff can serve two purposes. First, it can help verify applicants' claims of having no prior involvement in offending. Secondly, once confirmed as a Police employee, the information can be stored in an elimination database for staff who attend crimes scenes, work in laboratories, or are in situations where they can inadvertently contaminate exhibits with their own fingerprints or DNA.
27. The need for multiple databases, reflecting different storage requirements for different particulars, is broadly accepted by the two main groups which represent Police employees. However, the New Zealand Police Association has indicated its agreement to an elimination database turns upon such a database having the backing of legislation with clear rules set around the end use of such data. Police officials also welcome this possibility. I thus

⁴ UMR Research Ltd, *What the New Zealand public want and expect from their police in the 21st century* (2007), p 18.

recommend putting the operation of Police vetting and crime scene elimination/identification databases for biometric information on a statutory footing. This database would be voluntary for existing Police employees but a pre-requisite for anyone wishing to work for Police in the future.

28. To ensure only authorised use is made of the biometric information which is volunteered, I propose that the following legislative parameters be introduced:
- samples provided are for use by Police to positively identify applicants for employment, and verify claims of identity and non-involvement in crimes
 - samples provided can be retained on Police databases during the person's employment for use as an elimination or identification sample
 - samples provided will be destroyed at the person's request if he or she ceases to be a Police employee.
29. With these safeguards in place, I believe it will be possible to strike an appropriate balance between the needs of the Commissioner of Police (e.g., to set high entry standards for Police), and the interests of Police employees in having certainty about the uses and retention of their personal information.

Political neutrality

30. The fifth specific matter I propose be given legislative support is ensuring there is clear separation of Police employees from elected political functions. This issue is presently covered by section 31 of the 1958 Act, which states:

31. Members not to engage in politics—

Subject to the provisions of sections 52 and 53 of the Electoral Act 1993, no member of the Police shall, while he remains a member, take part in any election of a member of Parliament or of a local authority prescribed in that behalf by regulations under this Act, whether as a candidate or in any other manner, otherwise than by voting: provided that nothing in this section shall apply to the discharge by any member of the Police of his duty at or concerning any such election.

31. Section 31 drives at the need for Police staff to ensure their participation in political matters does not bring them into conflict with their duty to act in a politically-neutral way. This distancing is critical if governmental and public confidence is to be maintained in the impartiality of actions taken, and advice given, by Police staff. It is especially important there be no blurring of distinctions between law-making and law-enforcement roles. Indeed, so important is the political neutrality of police that I have proposed it be recognised as one of the statutory principles of policing (discussed in *Paper 1*).
32. Although involvement of Police employees in national-level politics is addressed by sections 52 and 53 of the Electoral Act 1993, I believe the new Policing Act should include a specific provision that restates the need for political neutrality. I also believe the existing framework for non-involvement in local body politics should be strengthened, rather than treating it simply as an issue of secondary employment. Under the permissive environment created by section 31 of the 1958 Act, a number of police officers have been allowed to simultaneously hold office as local councillors or members of a community board while also continuing to perform policing duties. Over the years, this has given rise to a number of arguable conflict of interest situations. The potential for these difficulties to arise may have heightened, given the requirement for local government to take a greater measure of responsibility for community safety under the Local Government Act 2002.

33. To mitigate the risks around perceived/actual conflict of interest situations, and blurring boundaries between law-making and law-enforcement, my suggestion is to take the same basic arrangements which apply to Police staff who wish to serve as Members of Parliament and translate them to any staff who wish to serve on local authorities and community boards (as defined in section 5 of the Local Government Act 2002). In short, they would be placed on leave from nomination day until the day following polling; or in some cases earlier, if their candidacy would materially affect their ability to perform Police duties satisfactorily, or be seen as independent. If successfully elected, the employee would be required to resign from Police or take extended leave, using criteria established for secondary employment situations. If unsuccessful, the candidate could resume duty as a Police employee after polling day.⁵
34. Such an approach might be criticised for imposing unreasonable constraints on Police employees' rights of political expression. Despite this, it is notable such limitations have been seen as justifiable in Canada,⁶ where the Charter of Rights and Freedoms protects the rights of police to political expression in a similar way as New Zealand's Bill of Rights Act does. My proposal will not bar a Police employee from seeking opportunities to serve in elected political roles in local government; it will simply ensure there are reasonable protections put in place to prevent misunderstandings about the employee 'wearing two hats'. It is also not a barrier for Police employees to provide, in an official capacity, professional support and input to community issues, via community boards or regular interactions between local authorities and Police. Nevertheless, the principle of political neutrality is integral to the conduct and management of the wider state services, but arguably is even more fundamental in policing. I seek Ministers' support to reinforce this principle through policing legislation.

Management of land holdings under the Public Works Act 1981

35. The sixth specific issue I suggest be given legislative support is facilitating the Commissioner's ability to effectively manage land held on behalf of the Crown under the Public Works Act 1981. These holdings are extensive, as they are the primary bases for Police's radio network assets up and down the country.
36. The power to lease or licence Crown lands acquired for public works is reserved to the Minister of Lands. These property management functions are able to be delegated to relevant government agencies which "control" such lands. However, because the Commissioner of Police is not clearly identified as a "Chief Executive" under section 44 of the State Sector Act 1988, a barrier has been identified to making such a delegation to Police. To overcome this barrier, it is necessary to clarify the role of the Commissioner as the Chief Executive of New Zealand Police, thus enabling the Lands Minister to make the necessary delegation to the Commissioner. Such an amendment was agreed to by officials in 2001, following Crown Law Office advice, but was not able to be progressed.
37. The Policing Bill offers an opportunity to make the carefully-worded legislative amendment required to improve Police's ability to administer its land holdings under the Public Works Act. I seek support to include such a clause in the Bill.

⁵ Given the timing of this year's local government elections, if Cabinet agrees to my proposal then the intention would be to include transitional provisions in the Policing Bill, to allow for any Police employees who are voted into office to be grandparented through until the next local government elections, where the clarified prohibition would take effect.

⁶ Notably, see regulation 58(4) of the Royal Canadian Mounted Police Regulations 1988.

Miscellaneous issues

38. In addition to these more significant matters, there are a small number of minor Police-related issues which could be tidied up in a Bill leading to a new Policing Act. I do not intend to deal with these issues in any great detail, although further information and supporting analysis can be made available. For present purposes, it might be sufficient to highlight the general headings of other matters which I propose be addressed as part of the planned Policing Bill:
- updating the approach for designating what is an official Police uniform, vehicle and other police equipment, and protocols for allowing the use of such uniforms and equipment for theatrical purposes⁷
 - removing the need for vehicle crash reports to be made to 'brick and mortar' police stations, in order to facilitate expanded use of Police's new Single Non-Emergency Number (SNEN) communications capability⁸
 - making sensible changes to non-Police legislation to reinforce the 'one Police' idea which forms the basis of Police's new workforce model⁹
 - introducing greater consistency to references to Police which are scattered throughout the statute book.¹⁰

Communication and publicity

39. Information on public announcements about all six Police Act Review papers was included in *Paper 1: Overview and principles*.

Financial implications

40. The mainly technical and administrative proposals outlined in this paper are not expected to have particular financial implications. Any associated costs will be met through existing departmental baselines. Financial implications may have arisen had it been proposed to enable cost-recovery for special policing services, but this is not being recommended as part of the new Act.

Legislative implications

41. The Police Act Review will result in the repeal of the Police Act 1958 and the revocation of the Police Regulations 1992. A replacement Policing Bill was awarded a category 5 priority (instructions to Parliamentary Counsel in 2007) on the government's 2007 Legislation Programme [CAB Min (07) 7/1A refers], with a view to introducing draft legislation to the House in December 2007.

⁷ Section 51A(2) of the 1958 Act, covering the use of a distinctive Police "design" or "logogram", offers a starting point but is largely focused on items of apparel, and is offence-based. There is also less certainty than desirable over what constitute an official Police uniform, with at least one case currently before the Courts involving a dispute about the status of an overalls-based uniform (e.g., as used by Police dog handlers and members of Police's tactical groups).

⁸ The issue arises under section 22(5) of the Land Transport Act 1998, which states one of the duties of a driver/rider in an accident involving an unoccupied motor vehicle is to: "...report the accident to the nearest police station ... as soon as practicable and in any case within 60 hours after the time of the accident". Ongoing reference to "the nearest police station" seems inappropriate, when such crash reports could probably be more efficiently reported either over the Internet or by calling the SNEN. A modest future-proofing amendment to the Land Transport Act could explicitly mandate this sort of reporting using information and communications technology tools, by taking out the location-specific reference to "nearest police station".

⁹ For example, the inconsistencies created in the Land Transport (Driver Licensing) Rules 1999, which for identity confirmation purposes accept as evidence of identity the photo ID card of a sworn member of Police but not a non-sworn member.

¹⁰ For example, the organisation is referred to as "The Police" in Part 2 of Schedule 1 of the Ombudsmen Act 1975, but as "The New Zealand Police" in Schedule 2 of the Public Audit Act 2001.

Timing

42. The legislative priority accorded to the Policing Bill by Cabinet requires the following timetable be implemented:

Activity	Phasing
Cabinet policy approvals of legislative proposals	September 2007
Drafting instructions to Parliamentary Counsel Office	Early October 2007
Consultation on an exposure draft of the new Bill	Mid November 2007
Cabinet consideration/approval of finalised Bill	December 2007
Introduction of Policing Bill to the House	Mid December 2007

43. Based on this timetable, and subject to future prioritisation discussions, it is anticipated the Policing Bill would be given its first reading in early 2008, be referred for select committee consideration in the first half of next year, and be enacted around June/July 2008.

Responsibilities

44. Subject to Cabinet's agreement, New Zealand Police would issue drafting instructions to Parliamentary Counsel in accordance with Cabinet's decisions on the proposals in all six Police Act Review papers. I propose decisions on technical issues which might arise in the course of drafting be delegated to me as Minister. If substantive issues arise during drafting, these will be referred to Cabinet Policy Committee, after consultation with other relevant Ministers.

Whether new policing legislation should be binding on the Crown

45. It is also timely to address the question of whether Police's new Act should bind the Crown [CO (02) 4 refers]. I have taken advice on this issue, and believe it would be appropriate for the new Act to be binding on the Crown. This is in keeping with the general principle the Crown should be bound by statutes unless the application of a particular Act to the Crown would impair efficient functioning of government. No such considerations arise in this case.

Regulatory impact analysis

46. A regulatory impact analysis is not required.

Human rights, Privacy Act, Bill of Rights and Treaty of Waitangi implications

47. This paper has no specific Treaty of Waitangi implications. The paper proposes targeted amendments to the Human Rights Act 1993 and Privacy Act 1993 (as referenced in paragraphs 15 to 19 above). In relation to the New Zealand Bill of Rights Act 1990, Ministry of Justice officials have noted:

- The proposal that new legislation contain an ability to do background checks on all prospective Police employees appears inconsistent with section 19 (freedom from discrimination) of the Bill of Rights Act
- The proposal that legislation be set in place to gather particulars of identity from people wishing to become Police employees; to be used to confirm the identity of applicants for employment; and for an elimination database may infringe section 21 (security against unreasonable search and seizure) of the Bill of Rights Act

- The proposal to prohibit all Police employees from participating in national-level and local body politics may be inconsistent with sections 12 (electoral rights), 14 (freedom of expression), 16 (freedom of peaceful assembly), 15 (freedom of association) and 19 (freedom from discrimination) of the Bill of Rights Act
- An updated approach to the use of Police uniforms for theatrical purposes may be inconsistent with section 14 (freedom of expression) of the Bill of Rights Act.

A final view as to whether the proposals are consistent with the Bill of Rights Act will be possible when the new legislation has been drafted.

Consultation

48. The Ministry of Justice, Crown Law Office, State Services Commission, Ministry of Transport and Law Commission were consulted on this paper. The Department of the Prime Minister and Cabinet, Treasury, Police Complaints Authority, Office of the Privacy Commissioner and Land Information New Zealand were informed. A draft of the paper was also shared with the New Zealand Police Association and the Police Managers' Guild Inc.

49. The Law Commission has asked for the following comment to be included:

The Law Commission does not support the proposal in rec 11 to extend the existing Criminal Records (Clean Slate) exemption for sworn Police staff to all prospective Police employees. We consider this to be at odds with the philosophy of the Clean Slate Act, which is based on the premise that a person who has never been sent to prison, and who has remained offence-free for 7 years, has no greater likelihood of re-offending than a non-offender. Their convictions are thus concealed, to prevent unwarranted discrimination.

In the course of developing the clean slate policy, many exemptions were sought. The few that were permitted (for employment in a position that involves national security; the judiciary; or as a member of Police, prison officer, probation officer or security officer) largely related to the ability of those office-holders to authorise and/or exercise the full range of coercive powers (such as arrest, detention of the person, and personal search).

We consider that the proposal in rec 11 poses a significant "floodgates" risk. The language of the supporting text is cast in terms of the need for the highest standards of ethics and integrity to foster public confidence, and the important and sensitive nature of various policing roles. These are grounds upon which so many professions could make a case to be exempt as to nullify the purpose of the Clean Slate Act. We do not comprehend, for example, why it is necessary to vet an applicant for an administrative position within Police for clean-slated convictions, when applicants for a bank teller position handling large amounts of public money cannot be so vetted. We recommend that Cabinet should instead agree to the retention of the status quo, so the clean slate exemption continues to apply to sworn members of Police only, notwithstanding the new single workforce structure and other related proposals.

50. The Ministry of Justice adds that the original intent of the Criminal Records (Clean Slate) Act 2004 was to limit the potential for relatively minor convictions to have a disproportionate effect on the lives of people who are otherwise law abiding, and who have proven themselves to be so for a not insubstantial amount of time. To maintain the original intent of the Act, the Ministry of Justice does not consider Police's current exemption should be extended to all Police employees.

51. The Office of the Privacy Commissioner has asked for the following comment to be included:

The Privacy Commissioner has serious concerns with the proposal to amend section 57 of the Privacy Act.

In the Commissioner's view, Police can carry out all vetting required on the basis of consent from the applicant, and their associates if necessary. This is the same process used by other employers, and complies with the Privacy Act. Any withholding of consent by an applicant should be sufficient to alert Police to a problem with that applicant. It is unclear why Police should be treated differently from the many other agencies monitoring prospective employees for sensitive positions (for example, the finance industry and teaching positions) who rely on the consent of the applicant. Section 57 exists for an entirely different purpose.

The Privacy Commissioner is willing to have her staff work further with officials to identify ways in which any perceived barriers in the Privacy Act to employee vetting by Police can be overcome.

Recommendations

52. The Minister of Police recommends the Committee:

Background

- 1 **note** the arrangements in this paper aim to put in place some of the building blocks for the administration of Police
- 2 **agree** the proposed new Policing Act be prepared as a framework statute, with matters of detail generally contained in regulations under the new Act or *General Instructions* issued by the Commissioner of Police

Carrying forward current provisions

- 3 **note** a large number of current provisions perform a worthwhile function and can be appropriately transited into a new Act or Regulations, in some cases with minor language updating
- 4 **agree** to the following administrative and miscellaneous proposals:
 - i to retain and transit into a new Act or Regulations with minor language updating sections 38, 39, 40, 41, 44, 44A-E, 57A (2) and (3), 58, 59, 61, 61A, 64, 65, 66(4) and (5), and regulations 5, 7 and 31;
 - ii to not carry forward sections: 62 and 63, and regulations 29 and 30

Issuing guidance for Police employees

- 5 **agree** to confirm the Commissioner of Police's ability to issue *General Instructions* for Police employees, with an updated deeming provision to cover electronic publication options, and clarifying the precedence *General Instructions* have over circulars, practice manuals or other policy guidance

Assignment of ranks

- 6 **agree** to confirm the Commissioner of Police's ability to assign ranks to Police employees

- 7 **agree** to replace outdated references to "commissioned officers of Police" and "non-commissioned officers of Police" in legislation where they still occur, in favour of the more contemporary practice of referring to specific Police ranks (e.g., Senior Sergeant) where it is appropriate to do so

Vetting practices

- 8 **note**, although Police's use of comprehensive pre-employment checks have a strong policy rationale, such practices do not have clear legislative backing, and in fact raise issues of compliance with the requirements of the Human Rights Act 1993 and Privacy Act 1993
- 9 **agree** to align Police's ongoing ability to conduct comprehensive pre-employment checks with exemptions which currently apply to intelligence organisations, by consequentially amending section 25 of the Human Rights Act 1993 and section 57 of the Privacy Act 1993 in order to provide:
- i it shall not be a breach of section 22 of the Human Rights Act 1993 for the Commissioner of Police to decline to employ a person due to his or her family status, within the meaning of section 21(1)(l)(iii) [being married to, or in a civil union or de facto relationship with, a particular person] or section 21(1)(l)(iv) [being a relative of a particular person] of the Human Rights Act;
 - ii nothing in principles 1 to 5 or principles 8 to 11 of the Privacy Act 1993 applies in relation to information collected, obtained, held, used, or disclosed by or to, New Zealand Police to enable the Commissioner of Police to decide whether to employ a particular person
- 10 **note**, currently under the Criminal Records (Clean Slate) Act 2004, all historic convictions can be considered during pre-employment vetting of applicants for sworn policing positions, but not for unsworn policing roles

- 11 Either (Police)

agree to strengthen Police's current vetting practices by allowing the existing Criminal Records (Clean Slate) Act exemption for Police to cover all Police employees

Or (Ministry of Justice and Law Commission)

agree to retain the existing Criminal Records (Clean Slate) Act exemption for Police to solely cover employees who would hold the office of constable

Forensic databases

- 12 **agree** to provide legislative support for the establishment of secure databases to enable identity confirmation of prospective Police employees, and to eliminate staff who attend crimes scenes, work in laboratories, or are in situations where they can inadvertently contaminate exhibits with their own fingerprints or DNA
- 13 **agree** to ensure only authorised use is made of biometric information on Police's vetting and elimination databases, by providing legislative parameters which confirm the samples provided:

- i are for use by Police to positively identify applicants for employment, and verify claims of identity and non-involvement in crimes;
- ii can be retained on Police databases during the person's employment for use as an elimination sample;
- iii will be destroyed at the person's request if he or she ceases to be a Police employee

Political neutrality

- 14 **note** the principle of political neutrality is fundamental in policing
- 15 **agree** to extend the same basic arrangements which apply to Police staff who wish to serve as Members of Parliament and translate them to any Police staff who wish to serve on local authorities and community boards

Management of land holdings under the Public Works Act 1981

- 16 **agree** to amend section 44(2) of the State Sector Act 1988 to clarify the Commissioner of Police is the chief executive of New Zealand Police, thereby enabling the Minister of Lands to delegate to the Commissioner the ability to effectively manage land held by Police on behalf of the Crown under the Public Works Act 1981

Miscellaneous issues

- 17 **agree** to update the approach for designating what is an official Police uniform, vehicle and other police equipment, and protocols for allowing the use of such uniforms and equipment for theatrical purposes
- 18 **agree** to amend section 22(5) of the Land Transport Act 1998 to remove the need for vehicle crash reports to be made to the nearest police station, to facilitate such reporting using modern information and communications technology tools
- 19 **agree** to make other sensible changes to non-Police legislation to reflect changes in descriptions of Police's workforce, and where possible introduce greater consistency to references to New Zealand Police

Drafting instructions

- 20 **agree** to incorporate provisions required to give effect to these administrative and miscellaneous proposals in the planned Policing Bill
- 21 **note** a Policing Bill was awarded a category 5 priority (instructions to Parliamentary Counsel) on the government's 2007 Legislation Programme, with a view to introducing draft legislation to the House in December 2007
- 22 **agree** the Policing Bill be binding on the Crown
- 23 **invite** New Zealand Police to issue drafting instructions to Parliamentary Counsel, in accordance with decisions made after consideration of all six Police Act Review papers
- 24 **agree** decisions on technical issues which might arise in the course of drafting be delegated to the Minister of Police

- 25 **note** if substantive issues arise in the course of drafting, these will be referred back to Cabinet Policy Committee by the Minister of Police, following consultation with other relevant Ministers

Publicity

- 26 **note**, following Cabinet approval, the Minister of Police intends to issue a media statement, and make copies of all six Police Act Review papers publicly available through the Police Act Review website

A large, stylized handwritten signature in black ink, appearing to read 'Annette King', with a long, sweeping flourish extending to the right.

Hon Annette King
Minister of Police

Dated: 5th September 2007

Current provision in 1958 Act or 1992 Regulations	Proposed action	Comment
<p>s.30 General instructions Commissioner may issue General Instructions, which all Police staff must obey and be guided by. GIs deemed to have been communicated to employees if published in <i>Police Gazette</i>, etc.</p>	Retain	Carry-over with a more precise definition and an updated deeming reference to allow the Commissioner to issue guidance/directions to staff using modern communications technologies, like e-publishing. The priority over other circulars or Police manuals to be made clear.
<p>s.31 Members not to engage in politics Confirms requirement for Police staff standing for Parliament to follow rules regarding stand-down during campaigning period, etc. Similar rules to apply to elections for local authorities if prescribed in regulation.</p>	Retain	Carry-over specific provision to new Act (albeit involvement by Police staff in parliamentary elections is covered by section 52(1)(b) of the Electoral Act 1993), but remove the current two-step process re: involvement in local body elections, introducing instead equivalent arrangements for police wishing to participate in local body politics.
<p>s.38 Execution of processes Confirms requirement for police to give effect to summonses, warrants, orders etc. issued by the Courts; allows for processes issued to a named officer to be executed by any Police employee or his/her assistants; and confirms ability for police to act on arrest warrants.</p>	Retain	Carry-over, but possibly delete reference to non-senior-manager level police in current provision ("every non commissioned officer") and extend more broadly to all Police employees who hold the office of constable, or who are authorised by warrant to exercise the power referred to in the relevant Court process.
<p>s.39 Protection of members for acts pursuant to process Provides immunity for constables executing a search warrant issued by a judicial officer, even if the warrant ultimately proves to have been invalidly- or irregularly- issued in some respect</p>	Possibly redundant; if not, then retain	May be overtaken by Law Commission proposal to develop legislation which includes a generic provision for all enforcement officers, which would confirm immunity from civil and criminal liability for acts done in executing a search warrant in a reasonable manner, and acts done in good faith and in a reasonable manner when exercising a warrantless power (<i>Search and Surveillance Powers</i> : R14.7, R14.8).
<p>s.40 Member may appear in Court by another Police employees who are not witnesses in a proceeding can appear in the place of another officer in that matter</p>	Retain	Carry-over, but requires amendment to change outdated reference from "Licensing Control Commission" to "Liquor Licensing Authority".
<p>s.41 Evidence of right to hold office If a dispute arises, common reputation is evidence of the right to hold or execute office as a Police employee</p>	Retain	Carry-over, with additional clarity provided by warrant card system.
<p>s.44 On termination of office, powers to cease All powers and authorises vested in a Police employee are to cease when the person terminates employment, and also if the person does not return to duty after leave</p>	Retain	Carry-over, but also refer to warrant card (whereby, if an employee is stood-down, suspended, discharged, resigns, retires, or goes on leave without pay, the person's warrant card must be surrendered).

Current provision in 1958 Act or 1992 Regulations	Proposed action	Comment
<p>s.44A-44E Police dogs Police dogs may accompany dog handlers (s 44A) Obstruction of police dog (s 44B) Killing or injuring police dogs (s 44C) Evidentiary provisions (s 44D) Power to require name and address (s 44E)</p>	<p>Retain offences in primary Act, but move administrative section to specific regulations</p>	<p>Carry-over, as described in <i>Paper 5</i>, although some increase in penalties associated with the relevant offences may be appropriate (e.g., the current maximum penalty for killing or injuring a police dog is a term of imprisonment not exceeding two years, or a fine not exceeding \$10,000). If any increase of offence penalties is recommended, formal Cabinet policy approvals will be obtained.</p>
<p>s.57A(2) and (3) Requirements re: safekeeping and return or seizure of property taken from people detained in Police custody.</p>	<p>Retain, but move to generic new statute</p>	<p>Carry-over, but likely to be overtaken by the Law Commission's recommendation that section 57A be transited into a new search and surveillance law (<i>Search and Surveillance Powers</i> report, para 16.3).</p>
<p>s.58 District Court may determine title to property If there is doubt about entitlement to abandoned/found property, or two or more people claim ownership of it, a Police employee may apply to the Court for direction.</p>	<p>Retain</p>	<p>Carry-over, aligned with the Law Commission's recommendations for how such situations should be dealt with by all enforcement agencies (<i>Search and Surveillance Powers: R13.12, R13.13</i>).</p>
<p>s.59 Unclaimed property Property that comes into the possession of Police and is unclaimed after three months may, by direction of the Commissioner, be sold at a pre-notified public auction. Unclaimed perishable goods may be disposed of earlier.</p>	<p>Retain</p>	<p>Carry-over, but amend to confirm scope applies only to lost or found property, to remove potential for inconsistency with section 199(3) of the Summary Proceedings Act 1957 (as suggested by the Law Commission's <i>Search and Surveillance Powers</i> report, para 13.21). Also use more open language to allow for future e-auction disposals.</p>
<p>s.61 Publication of <i>Police Gazette</i> Commissioner may produce a service-wide publication including notices and such matters as are felt expedient.</p>	<p>Retain, but move to regulations</p>	<p>Carry-over with modernised language, to confirm Commissioner's ability to use modern communications options, like e-publishing.</p>
<p>s.61A Confidentiality of <i>Police Gazette</i> and other documents protected Protection of confidential Police documents, with specific offence of possession of such documents without lawful authority or reasonable excuse (3mths imp.; \$500 fine).</p>	<p>Retain, but move to regulations</p>	<p>Carry-over, but update to confirm application of Official Information Act 1982 to contemporary Police publications like <i>Ten-One</i> magazine and internal electronic bulletin board messages and Intranet postings.</p>
<p>s.62 Proceedings not to be quashed for want of form General savings provision for actions taken under Act.</p>	<p>Redundant</p>	<p>Does not appear to have been relied upon in recent memory, and there does not seem to be a compelling case to retain this provision.</p>
<p>s.63 Fines Confirms any fines paid under Act can be deducted from employee's salary, and paid to the Crown Bank Account.</p>	<p>Redundant</p>	<p>Unnecessary to carry-over, as it is not anticipated there would continue to be the ability for fines to be imposed under Police's new internal disciplinary and performance management system.</p>

Current provision in 1958 Act or 1992 Regulations	Proposed action	Comment
<p>s.64 Regulations Confirms ability for Governor-General to make all such regulations as may be necessary or expedient for giving effect to the provisions of the Act, or its administration.</p>	Retain	Carry-over in updated form, aligned to the Legislation Advisory Committee's <i>Guidelines on the Process and Content of Legislation</i> (chapter 10).
<p>s.65 Annual report Commissioner to provide the Minister as soon as practicable after 31 March each year with a report on "the operation of the Police". Annual report to include information on use of listening devices and road blocks under sections 216B(3) and 317B of Crimes Act 1961.</p>	Retain	Carry-over with amendments to reflect modern practice of reporting as soon as possible after the end of the 30 June financial year. Also update language to confirm expectation of annual reports on Police's overall operations, and such other matters affecting Police as the Commissioner thinks fit. Reporting requirements for police use of listening devices and road blocks to be consolidated with reporting obligations for other search and surveillance powers (see Law Commission's <i>Search and Surveillance Powers</i> report, R15.7-10), rather than separate provision being made in the new Policing Act.
<p>s.66(4) and (5) Repeals and savings Deems any reference to "Police Force or the Force" is to be considered as reference to New Zealand Police, and any reference to "a Superintendent of Police, or an Inspector of Police, or a Sub-Inspector of Police" is to be deemed a reference to a commissioned officer of Police.</p>	Largely redundant	References to "commissioned officers" are proposed to be removed. Very few, if any, remaining references in legislation to "Police Force".

<p>r.5 Control and supervision Confirms arrangements for acting as disciplined service, and communication of <i>General Instructions</i> and circulars.</p>	Retain, but move to primary legislation	As outlined in <i>Paper 3</i> , it is proposed provisions in the new Act will confirm Police command and control arrangements. The hierarchy of published guidance for Police staff will be clarified.
<p>r.7 Secrecy Police staff must maintain secrecy and confidentiality.</p>	Retain	General duties reinforced by <i>Code of Conduct</i> , but may still be useful to carry-over provision to provide greater visibility and legal backing.
<p>r.29 Witnesses at inquiries under section 56 Provisions for witness examinations, summonses, etc.</p>	Redundant	Provision becomes unnecessary, given proposal in Paper 2 to default to public inquiry powers that are available under general legislation.
<p>r.30 Code of conduct for non-sworn members Commissioner may issue a <i>Code</i> for unsworn members.</p>	Redundant	Over-taken by decision to develop a single <i>Code of Conduct</i> for all Police employees. Could be supported by enabling provision in Act.
<p>r.31 Unauthorised use of Police crest and badge Extends section 51A of Act to Police crest and badge.</p>	Retain	Use of Police crest and badge will continue to be protected, with similar protections provided for other unique Police-branded designs.

Name of Act	Reference to commissioned officer or non-commissioned officer
Arms Act 1983	sec. 5, 7A, 14, 18, 24, 27(1), 27A, 33, 33B, 34B, 35, 36, 41, 59, 61 and 62
Boxing and Wrestling Act 1981	sec. 3(1)
Children, Young Persons and Their Families Act 1989	sec. 236(1) and 242(1)(b)
Crimes Act 1961	sec. 78D, 216B, 312B, 312CA, 312CC, 312D and 312P
Criminal Investigations (Bodily Samples) Act 1995	sec. 13(2), 17A(2)(a), 18(2), 39(1), 39C(1), 39C(2), 44A(4) and 61(2)(a)
Defence Act 1990	sec. 89(3)
International Crimes and International Criminal Court Act 2000	sec. 108(1)(b)
International Terrorism (Emergency Powers) Act 1987	sec. 10(4)
International War Crimes Tribunal Act 1995	sec. 11B, 48(1), 55(1) and 123(3)
Misuse of Drugs Amendment Act 1978	sec. 14(2), 15A(2), 16(1)(c) and 28(1)
Mutual Assistance in Criminal Matters Act 1992	sec. 59(2)(b), 61(2)(b) and 62(2)(b)
Private Investigators and Security Guards Act 1974	sec. 37(1) and 37(2)
Proceeds of Crimes Act 1991	sec. 30(2), 30A(1), 68(1), 76A(1), 77(1) and 81A(1)
Summary Proceedings Act 1957	sec. 192(4)

Name of Regulation or Rule	Reference to commissioned officer or non-commissioned officer
Arms Regulations 1992	reg. 9(1), 9(2) and 14
Boxing and Wrestling Regulations 1958	reg. 3(2), 4(1), 4(2), 5, 6(a), 7(1)(a) and 7(2)
Land Transport (Road User) Rule 2004	rule 7.21(2)(c)